

# BEST PRACTICES FOR WATER QUALITY TRADING

## JOINT REGIONAL AGREEMENT

April 17, 2013

### **DRAFT Meeting Summary: Workshop 1, April 9-10, 2013**

**Attendees:** USEPA Region 10 (EPA R10), Idaho Dept. of Environmental Quality (IDEQ), Oregon Dept. of Environmental Quality (ODEQ), Washington Dept. of Ecology (WA DOE), Willamette Partnership (WP), and The Freshwater Trust (TFT)—See below for individuals

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Thank you for your participation and efforts at the Best Practices for Water Quality Trading (WQT) Joint Regional Agreement (JRA) workshop held April 9-10, 2013 in Union, Washington. This memo includes agreed-upon action items, a list of documents provided at this meeting, and a brief synopsis of the meeting.

Action Items	Who	When
1. <u>Project Outreach/Communications</u> <ul style="list-style-type: none"> <li>WQT community outreach information sheet will be revised to reflect the purpose of the JRA and agencies' vision for possible outcomes</li> <li>Each state will develop its external communications plan</li> </ul>	Ecology first, then All  EPA R10, IDEQ, ODEQ, WA DOE with help from WP	4/30/2013  6/1/2013
2. <u>Pilot Projects</u> <ul style="list-style-type: none"> <li>Each state will evaluate potential pilot projects to test identified best practice components for trading (e.g. TMDLs, permits, policies, etc.)</li> </ul>	EPA R10, IDEQ, ODEQ, WA DOE	6/1/2013
3. <u>Response to Draft Materials on Components of WQT</u> <ul style="list-style-type: none"> <li><i>Guiding Principles:</i> Draft document will be revised to reflect inter-agency discussion</li> <li><i>Eligibility:</i> Identify information needed/specific analysis needed when a trade is proposed prior to or outside of a TMDL. Are there other possible trading scenarios to consider?</li> <li><i>Eligible Buyers:</i> WP will coordinate with EPA to describe the needed compliance status of an NPDES permittee before they are eligible to be a buyer.</li> <li><i>Eligible Credit Generating Actions:</i> Agencies to give WP any lists of potentially eligible BMPs. WP to work with interested agency staff to identify an initial list of BMPs and to discuss a later process for adding/modifying the list. WADOE to send process for reviewing eligible BMPs</li> <li><i>Site Screening/Validation:</i> WP and WADOE to think through what information a</li> </ul>	Bobby/Karin  Bill/Claire, Marti, Rane, Helen  Claire/Dustan, Bobby  Bobby Helen—WA's certainty framework ; How BMPs get added to stormwater manuals (e.g. W. WA manual)  Helen and Bobby	4/2013 - 5/1/2013  5/15/2013  4/2013  4/2013 – 6/2013  6/2013

Action Items	Who	When
project developer needs to provide on consistency with local land use and other state rules prior to generating credits		
• <i>Verification, Certification, Registration</i> : Explore roles for agencies in sharing infrastructure	Claire	6/2013
• <i>Ecosystem Crediting Platform</i> : WP will provide agencies with a demonstration of the crediting platform.	Carrie	5/2013

### Meeting Documents

The following documents were distributed at this meeting:

- Workshop agenda
- Meeting discussion draft of guiding principles for WQT
- Meeting discussion draft of Tier 2 components outline
- Discussion guides: eligibility for WQT; project implementation & quality assurances; pilot project considerations; verification, certification & registration
- March 15, 2013 letter from NWEA to EPA re: Oregon WQT program
- Workshop slides

Please contact Bobby Cochran at the Willamette Partnership ([cochran@willamettepartnership.org](mailto:cochran@willamettepartnership.org)) for copies of these documents.

### Meeting Summary

#### Attending:

- *U.S. Environmental Protection Agency*: Dustan Bott, Dru Keenan, Laurie Mann, Susan Poulsom, Claire Schary, Bill Stewart
- *Idaho Department of Environmental Quality*: Marti Bridges
- *Oregon Department of Environmental Quality*: Gene Foster, Ranei Nomura
- *Washington Department of Ecology*: Helen Bresler, Melissa Gildersleeve
- *Willamette Partnership*: Bobby Cochran, Neil Mullane, Todd Gartner
- *The Freshwater Trust*: Joe Furia, Karin Power, David Primozych, Tim Wigington

#### I. Introductions and Workshop Overview

Each participant articulated expectations and hopes for the JRA process outcome. Many talked about wanting a better understanding of how each state agency approached trading. Others wanted to discuss the nuts and bolts that might be common across states even if state policy decisions might be different. Some talked about the value of networking between the states to share lessons, issues, and building a stronger set of trading programs than what we have now. Willamette Partnership walked the group through the workshop agenda, and explained how each workshop will provide participants an opportunity to brainstorm on particular aspects of WQT, including issues raised in the March 15, 2013 NWEA letter to EPA R10.

#### II. Discussion on Guiding Principles for WQT

Discussion of the core guiding principles that should anchor all WQT programs took place. Attendees noted that WQT likely involves two different scales—the individual permit level, and the basin-wide water quality standard level. As trading is primarily a method for helping point sources comply with permit limits in a more ecologically beneficial way, it is not appropriate in or a solution for all water

quality concerns, and trading should not be expected to remedy all issues in a watershed. Attendees also concurred on the importance of the 2003 EPA trading policy as a foundation in developing these principles.

### **III. Tier 1 Update**

TFT updated attendees on the state agencies' attorneys' discussions regarding the JRA and WQT. It is too early to ascertain what references will be included in a final statement, but the attorneys for the respective states are engaged and evaluating how to best support their respective agencies in this process.

### **IV. Communication Strategy**

Attendees discussed the initial communication plans, and how to balance providing space for agency dialogues, but also ways to keep others informed/engaged. Agencies reiterated the importance of clear and transparent discussions, and committed to revising the external communication materials to better convey what the JRA is meant to accomplish (a joint statement of what the agencies individually or jointly believe they need to support credible and CWA-compliant water quality trades and trading programs) and is not (a formal rulemaking or guidance promulgation). The respective states agreed that it will be essential for them to determine how to facilitate outreach, and will work with WP/TFT to help make appropriate connections. Immediately, WP will provide access to the meeting summary and explanatory "Best Practices for Water Quality Trading" documents on its website.

### **V. Tier 2 Discussion**

Attendees began discussions on some important components of trading. In addition to reviewing particular elements of trading that have taken place elsewhere, individuals agreed on the importance of providing a clear blueprint for how WQT is implemented through the NPDES permit and how the foundation for the WQT is established in a TMDL, and a clear explanation of the decisions involved in crafting trading solutions. Attendees emphasized the importance of this point because as WQT is a technical process, those who are not as familiar with the mechanics of trading should be able to quickly and easily understand how it may be appropriate and used in some circumstances and when it may not. The Tier 2 outline presented at the meeting describes the different topics that will be discussed.

#### *A. Default Units of Trade*

Attendees agreed that credit units need to be consistent with the units defined in an NPDES permit, which in turn need to be consistent with a TMDL. The group determined that nutrient units should usually be mass-based (e.g. lbs of nutrients), but noted that surrogate proxies may also be appropriate where the water quality standard violations of a particular parameter may actually be the manifestation of water quality impacts from other parameters (i.e. where a dissolved oxygen problem is actually derived from nutrient loading). The group began discussing when seasonal or annual units might be appropriate, and the when different forms of a pollutant should be used as a credit unit (e.g. TP vs. biologically available P). As for temperature, the states have different experiences; Oregon and Idaho have used kcals where Washington expressed an interest in using degrees. Further discussion is needed on temperature if a single unit is to be identified.

#### *B. Eligible Trading Environments*

Attendees expressed a strong preference that trading occur within a TMDL regulatory environment for a couple of reasons. First, they felt appropriate trades really needed that level of watershed information, and second, there may be limited staff resources to gather that kind of information outside of a TMDL effort. All also noted that pre-TMDL, post-TMDL/pre-permit, section 401 certification, and water quality standards variance trading scenarios may occur in certain, limited circumstances provided that

particular sideboards and factors are in place, and each approving agency has the resources to perform the necessary technical analysis. It was suggested to look at some of the language in Washington's trading guidance to shape this discussion.

### *C. Eligible Buyers*

Attendees agreed that point sources who have already met their technology-based effluent limitations have been and likely will be the primary buyers in WQT. Attendees discussed that point source eligibility should also be related to past permit compliance performance, and must also be in compliance with groundwater management regulations applicable to that source. What "past permit compliance performance" means exactly was unclear and further work is needed to better define what this eligibility requirement may look like.

### *D. Trading Areas*

Attendees discussed that trading areas will likely vary based on localized conditions, and that the agencies will have to identify the particular point of compliance for each watershed (knowing that the point will change depending on the pollutant at issue). It was clear that a point of compliance should be clearly defined, and that should be used to delineate a trading area.

### *E. Eligible Credit Generating Actions*

Attendees liked the idea of identifying an initial list of eligible credit generating BMPs and discussing the quality standards associated with each of those activities. NRCS standards are one place to start, though attendees believed that standards can become more robust in the context of WQT. Attendees also reflected upon how to identify a process by which new eligible BMPs can be approved by each regulatory agency. There needs to be an approval process that fields high quality BMPs and also provides a mechanism to modify a list of BMPs or standards for a particular BMP based on new science and experience with that BMP. Individual agency staff volunteered to identify the BMPs used in each state, as well as the process for adding to or modifying such lists.

### *F. Project Site Implementation – Site Screening & Consistency with Other Laws*

Attendees agreed that site pre-screening for eligibility is a good idea from a practical standpoint, but that it may not be a requirement. Attendees asked about the implications based on who would do the site screening and how that would work. Each state may do things differently. Attendees also discussed the types of obligations credit generators or sellers should have in terms of identifying applicable laws at a project site as a pre-requisite for generating credits.

### *G. Project Management Plans & Stewardship Requirements*

Attendees discussed appropriate protections for an installed BMP (as a credit generating activity), and likewise discussed the time periods over which a BMP should be protected by a land lease, easement, or other similar instruments. All discussed factors such as the duration of a permit, the length of BMP effectiveness, landowner constraints in terms of contract length, and the transaction costs associated with calculating and verifying credits on various timeframes. Attendees suggested that the appropriate lease or easement timeframe is likely 20 years for structural BMPs, and 5 years for nonstructural BMPs (unless there is evidence of severe supply constraints on permittee buyers). For nonstructural BMPs that can change year-over-year (e.g. cover crops and fertilizer application), there was discussion about 1-year contract lengths vs. linking a 5-yr contract to a farm plan that provides some flexibility on the mix of

BMPs in any given year.

*H. Verification, Certification & Registration*

Attendees recognized the importance of post-implementation verification, certification, and registration as a means for ensuring project integrity and permittee compliance. Attendees requested some analysis on what it might mean for different entities to perform these functions (e.g. state agencies, permittees, third parties). Attendees also began discussing the importance of common systems to publicly track and report on trades in the region in a consistent way.